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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,074	12/03/2003	Robert W. Stadler	P-20485.00	4895
27581	7590	02/09/2006	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			JACKSON, BRYAN M	
			ART UNIT	PAPER NUMBER
			3762	
DATE MAILED: 02/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/727,074

Applicant(s)

STADLER ET AL.

Examiner

Bryan M. Jackson

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12, 16-19, 21-28, 32-36, 38-45, and 49-51 is/are rejected.
- 7) ☒ Claim(s) 4, 13-15, 20, 29-31, 37, 46-48 and 52-57 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/21/04, 2/13/04</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The Information disclosure statement (IDS) submitted on 4/21/04 and 2/13/04 are acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-7, 9-10, 22-23, 25-26, 39-40, and 42-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what "a first rate" and "a second rate less than the first rate" refers to (i.e. time period, etc.).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5, 11-12, 16-18, 21, 27-28, 32-35, 44-45, and 49-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen (5163429). Cohen discloses "a signal representative of fixed or varying baseline pressure is provided and if the short term current pressure differs therefrom by a predetermined value", considered to be a threshold, "an indication of hemodynamic compromise" is given, and "determination of whether the difference between fixed or varying baseline pressure and current pressure is undertaken" after a rate criteria (abstract).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 19, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (5163429). Cohen discloses the claimed invention but does not disclose expressly the accumulation of the difference between a baseline and recent parameter value. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the determination of the difference between a baseline pressure & current pressure with a threshold as an indication of hemodynamic compromise, as taught by Cohen, with the an

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accumulated difference, because Applicant has not disclosed that an accumulated difference provides an advantage, is used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected the Applicant's invention to perform equally well with the determination of the difference between a baseline pressure & current pressure with a threshold as an indication of hemodynamic compromise, as taught by Cohen, because it provides a means for alerting a patient of hemodynamic compromise, and since it appears to be an arbitrary design consideration which fails to patentably distinguish over Cohen.

Therefore, it would have been an obvious matter of design choice to modify Cohen to obtain the invention as specified in the claim(s).

Claims 5, 21, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen in view of Hauck (5318597). Cohen discloses the claimed invention except for the second computation scheme for a baseline trend (claim 5). Hauck teaches that it is known to use a constant, K, to be programmable so as to allow baselines to be computed (col 7, ln 38-44) – (see equation in figure 4c, block 132), wherein K is considered a constant equivalent to a rate value. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first computation of a fixed or varying baseline, as taught by Cohen, with a constant, K, to be programmable so as to allow baselines to be computed, as taught by Hauck, in order to provide different baseline values for comparison against a predetermined threshold.

Claims 8, 24, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen in view of Alt (20040116819). Cohen discloses the claimed invention except for the second computation scheme for a short term trend. Alt teaches that it is known to compute short term averages of impedance values for a period of hours to days (pg 7, para 0042). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first computation of a short term value, as taught by Cohen, with a second computation of short term average for a period of hours to days, as taught by Alt, in order to provide different short term values for comparison against a baseline value.

#### ***Allowable Subject Matter***

Claims 4, 13-15, 20, 29-31, 37, 46-48, and 52-57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Van Dam (6671549) discloses a pacemaker utilizing QT dynamics to diagnose heart failure. Padmanabhan (6508771) discloses a method and apparatus for monitoring heart rate.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan M. Jackson whose telephone number is 571-272-7335. The examiner can normally be reached on Monday through Friday, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JEFFREY R. JASTRZAB  
PRIMARY EXAMINER  
